

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

|                                 |   |                         |
|---------------------------------|---|-------------------------|
| -----X                          |   | Chapter 11              |
| In re:                          | : |                         |
|                                 | : | Case No. 08-10141 (MFW) |
| BUFFETS HOLDINGS, INC.,         | : |                         |
| a Delaware corporation, et al., | : | Jointly Administered    |
|                                 | : |                         |
| Debtors.                        | : |                         |
| -----X                          |   |                         |

**DESIGNATION PURSUANT TO FED. R. BANKR. P. 8006 OF ITEMS  
TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT  
OF ISSUES ON APPEAL WITH RESPECT TO APPEAL FROM ORDER  
DENYING DEBTORS' MOTIONS TO REJECT UNEXPIRED LEASES  
AND MOTION TO ASSUME AND ASSIGN UNEXPIRED LEASE**

Appellants, Buffets Holdings, Inc., OCB Restaurant Co. and Hometown Buffets, Inc. (together with their affiliated debtors<sup>1</sup> and debtors in possession in the above-captioned cases, the "Debtors"), hereby submit, pursuant to Bankruptcy Rule 8006, this designation of items to be included in the record on appeal regarding the Notice of Appeal [Docket No. 863] from the Order Denying Debtors' Motions to Reject Unexpired Leases and Motion to Assume and Assign Unexpired Lease (the "Severability Order"), dated May 23, 2008 [Docket No. 835].

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Buffets Holdings, Inc. (4018); Buffets, Inc. (2294); HomeTown Buffet, Inc. (3002); OCB Restaurant Company, LLC (7607); OCB Purchasing Co. (7610); Buffets Leasing Company, LLC (8138); Ryan's Restaurant Group, Inc. (7895); Buffets Franchise Holdings, LLC (8759); Tahoe Joe's, Inc. (7129); HomeTown Leasing Company, LLC (8142); OCB Leasing Company, LLC (8147); Big R Procurement Company, LLC (5198); Ryan's Restaurant Leasing Company, LLC (7405); Fire Mountain Restaurants, LLC (8003); Ryan's Restaurant Management Group, LLC (6739); Tahoe Joe's Leasing Company, LLC (8145); Fire Mountain Leasing Company, LLC (7452); Fire Mountain Management Group, LLC (7299). The address for all of the Debtors is 1460 Buffet Way, Eagan, MN 55121.

**DESIGNATION OF ITEMS FOR RECORD ON APPEAL<sup>2</sup>**

| <b>Index No.</b> | <b>Docket/Trial Exhibit No.</b> | <b>Description</b>   |
|------------------|---------------------------------|--|
| 1                | Docket No. 22                   | First Motion of the Debtors for an Order Authorizing the Debtors to (1) Reject Nunc Pro Tunc Certain Executory Contracts and Unexpired Nonresidential Real Property Leases and Subleases Primarily Related to Closed Restaurant Locations, and (2) Abandon any Property that Remains on the Premises Covered by the Leases, dated January 22, 2008 (the " <u>First Motion</u> ") |
| 2                | Docket No. 137                  | Limited Objection by FP1 LLC to the First Rejection Motion, dated February 5, 2008   |
| 3                | Docket No. 356                  | Third Motion of the Debtors for an Order Authorizing the Debtors to (1) Reject Certain Unexpired Nonresidential Real Property Leases Related to Closed Restaurant Locations <u>Nunc Pro Tunc</u> as of February 29, 2008, and (2) Abandon any Property that Remains on the Premises Covered by the Leases, dated February 22, 2008 (the " <u>Third Motion</u> ")                 |
| 4                | Docket No. 409                  | Limited Objection by FP2 LLC to the Third Rejection Motion, dated February 27, 2008  |
| 5                | Docket No. 565                  | Debtors' Motion for Assumption and Assignment of Warrington Lease, dated March 25, 2008 (the " <u>Assumption Motion</u> ")   |
| 6                | Docket No. 622                  | Objection of FP2 LLC and FP2-7 LLC to Debtors' Motion for Assumption and Assignment of Warrington Lease, dated April 4, 2008   |
| 7                | Docket Nos. 626 and 627         | Opening Brief in Opposition to Motion of Debtors to Reject Selected Portions of Family Property Leases, dated April 4, 2008  |
| 8                | Docket No. 629                  | The Official Committee of Unsecured Creditors' Brief in Support of the Debtors' Motions to Reject Two Leased Premises and Assume and Assign One Leased Premise Under Master Lease Agreements with FP1 LLC and FP2 LLC, dated April 4, 2008   |
| 9                | Docket No. 630                  | Opening Brief of Buffets Holdings, Inc., et al., in Support of Motions to (I) Reject Unexpired Leases of Nonresidential Property for Underperforming Property in Moline, Illinois and Muskegon, Michigan and (II) Assume and Assign Unexpired Lease of Underperforming Property in Warrington, Pennsylvania, dated April 4, 2008   |

<sup>2</sup> The following designation includes all documents, exhibits, attachments, and supplements to each item designated herein and in other designations filed in this appeal.

| <b>Index No.</b> | <b>Docket/Trial Exhibit No.</b> | <b>Description</b>  |
|------------------|---------------------------------|---|
| 10               | Docket No. 631                  | Submission of Documents Related to Opening Brief of Buffets Holdings, Inc., et al., in Support of Motions to (I) Reject Unexpired Leases of Nonresidential Property for Underperforming Property in Moline, Illinois and Muskegon, Michigan and (II) Assume and Assign Unexpired Lease of Underperforming Property in Warrington, Pennsylvania, filed April 4, 2008 |
| 11               | Docket No. 647                  | Answering Brief of Buffets Holdings, Inc., et al., in Further Support of Motions to (I) Reject Unexpired Leases of Nonresidential Property for Underperforming Property in Moline, Illinois and Muskegon, Michigan and (II) Assume and Assign Unexpired Lease of Underperforming Property in Warrington, Pennsylvania, dated April 10, 2008                         |
| 12               | Docket No. 648                  | The Official Committee of Unsecured Creditors' Reply Brief in Support of the Debtors' Motions to Reject Two Leased Premises and Assume and Assign One Leased Premise Under Master Lease Agreements with FP1 LLC and FP2 LLC, dated April 10, 2008   |
| 13               | Docket No. 649                  | Reply Brief in Opposition to Motion of Debtors to Reject Selected Portions of Family Property Leases, dated April 10, 2008  |
| 14               | Docket No. 806                  | Transcript of Omnibus Hearing Held April 14, 2008 Before The Honorable Mary F. Walrath United States Bankruptcy Judge, filed on May 9, 2008   |
| 15               | Docket No. 834                  | Opinion Denying Debtors' Motions to Reject Unexpired Leases and Motion to Assume and Assign Unexpired Lease, filed May 16, 2008   |
| 16               | Docket No. 835                  | Order Denying Debtors' Motions to Reject Unexpired Leases and Motion to Assume and Assign Unexpired Lease, filed May 16, 2008   |
| 17               | Docket No. 863                  | Debtors' Notice of Appeal of Order Denying Debtors' Motions to Reject Unexpired Leases and Motion to Assume and Assign Unexpired Lease, dated May 23, 2008  |
| 18               | Docket No. 867                  | Notice of Appeal filed by the Official Committee of Unsecured Creditors, dated May 23, 2008   |
| 19               | Debtors' Trial Exhibit 1        | Lease Agreement Dated December 11, 2002 Between Landlord, FP1 LLC, and Tenant, Hometown Buffet, Inc. and OCB Restaurant Co.   |
| 20               | Debtors' Trial Exhibit 2        | Lease Agreement Dated December 11, 2002 Between Landlord, FP2 LLC, and Tenant, Hometown Buffet, Inc. and OCB Restaurant Co.   |
| 21               | Debtors' Trial Exhibit 3        | Ground Lease Dated May 28, 1996 By and Between OCB Realty Co., as Tenant, and THF-L Moline Development, L.L.C., as Landlord, for Real Property in Rock River Plaza, Moline, Illinois  |

| Index No. | Docket/Trial Exhibit No.            | Description  |
|-----------|-------------------------------------|--|
| 22        | Debtors' Trial Exhibit 4            | Ground Lease Dated September 8, 1995 By and Between OCB Realty Co., as Tenant, and Sherman Centre, L.L.C., as Landlord, for Real Property at Sherman Centre, Muskegon, Michigan                                    |
| 23        | Debtors' Trial Exhibit 5            | Lease Agreement Dated February 9, 2000 By and Between OCB Realty Co., as Tenant, and PR Warrington Limited Partnership, as Landlord, for Space in Creekview Shopping Center, Warrington, Pennsylvania              |
| 24        | Debtors' Trial Exhibit 6            | Landlord Estoppel and Consent Related to Lease Dated May 28, 1996 (Moline)   |
| 25        | Debtors' Trial Exhibit 7            | Landlord Estoppel and Consent Related to Lease Dated September 8, 1995 (Muskegon)  |
| 26        | Debtors' Trial Exhibit 8            | Landlord Estoppel and Consent Related to Lease Dated February 9, 2000 (Warrington)   |
| 27        | Family Properties' Trial Exhibit 1  | Letter of Intent dated August 23, 2002 (Exhibit 1 to Deposition of Michael Andrews, Jr.)   |
| 28        | Family Properties' Trial Exhibit 2  | Draft Letter of Intent dated April 26, 2002 (Exhibit 2 to Deposition of Michael Andrews, Jr.)  |
| 29        | Family Properties' Trial Exhibit 3  | Draft Letter of Intent with Company Comments dated July 3, 2002 (Exhibit 3 to Deposition of Michael Andrews, Jr.)  |
| 30        | Family Properties' Trial Exhibit 4  | July 11, 2002 E-mail from Jay Schiesser to clanigan@caxton-iseman.com re: Revised Term Sheets from ACC, with attached Draft Letter of Intent dated July 10, 2002 (Exhibit 4 to Deposition of Michael Andrews, Jr.) |
| 31        | Family Properties' Trial Exhibit 5  | Draft Letter of Intent dated July 30, 2002 (Exhibit 6 to Deposition of Michael Andrews, Jr.)   |
| 32        | Family Properties' Trial Exhibit 6  | August 7, 2002 E-mail from Mike Duncan to shrewsjr@WellsFargo.com re: Revised Pool B – 35 Unit SLB, with attached spreadsheet containing lease term information (Exhibit 7 to Deposition of Michael Andrews, Jr.)  |
| 33        | Family Properties' Trial Exhibit 7  | August 7, 2002 E-mail from Mike Duncan to thall@caxton-iseman.com re: Can you let the company know... (Exhibit 8 to Deposition of Michael Andrews, Jr.)  |
| 34        | Family Properties' Trial Exhibit 8  | August 9, 2002 E-mail from Mike Duncan to shrewsjr@WellsFargo.com re: Revised Letter of Intent, with attached Draft Letter of Intent dated August 8, 2002 (Exhibit 9 to Deposition of Michael Andrews, Jr.)        |
| 35        | Family Properties' Trial Exhibit 9  | Letter of Intent dated August 23, 2002 (Exhibit 12 to Deposition of Michael Andrews, Jr.)  |
| 36        | Family Properties' Trial Exhibit 10 | FP1 Lease Agreement dated December 11, 2002 (Execution Copy) (Exhibit 13 to Deposition of Michael Andrews, Jr.)  |
| 37        | Family Properties' Trial Exhibit 11 | FP2 Lease Agreement dated December 11, 2002 (Execution Copy) (Exhibit 14 to Deposition of Michael Andrews, Jr.)  |

| Index No. | Docket/Trial Exhibit No.            | Description   |
|-----------|-------------------------------------|---|
| 38        | Family Properties' Trial Exhibit 12 | November 25, 2002 E-mail from John Shrewsberry to Joshua Pack re: Buffets (Exhibit 3 to Deposition of John Shrewsberry)   |
| 39        | Family Properties' Trial Exhibit 13 | July 12, 2002 E-mail from John Shrewsberry to John Walbridge re: Buffets Update (Exhibit 4 to Deposition of John Shrewsberry)   |
| 40        | Family Properties' Trial Exhibit 14 | October 15, 2007 E-mail from Benjamin Laforest to Nancy Sedlak re: Assignment of Old Country Buffet Lease, with attached consent from Cicero ground lease landlord                      |
| 41        | Family Properties' Trial Exhibit 15 | Draft Letter of Intent dated July 22, 2002 (Exhibit 3 to Deposition of Michael Duncan)  |
| 42        | Family Properties' Trial Exhibit 16 | July 29, 2002 E-mail from Jay Schiesser to Mike Andrews re: ACC term sheet markup, with attached Draft Letter of Intent dated July 30, 2002 (Exhibit 4 to Deposition of Michael Duncan) |
| 43        | Family Properties' Trial Exhibit 17 | December 11, 2002 Letter to Buffets from Wells Fargo re: Letter of Intent, with attached Letter of Intent dated August 23, 2002 (Exhibit 3 to Deposition of James K. Noble)             |
| 44        |                                     | FP1 LLC and FP2 LLC's Designation and the Debtors' Counter-Designation of the Deposition of Richard Michael Andrews, Jr., taken March 14, 2008  |
| 45        |                                     | FP1 LLC and FP2 LLC's Designation and the Debtors' Counter-Designation of the Deposition of Michael Duncan, taken March 25, 2008  |
| 46        |                                     | Debtors' Designation and FP1 LLC and FP2 LLC's Counter-Designation of the Deposition of Nancy J. Sedlak, taken April 1, 2008  |
| 47        |                                     | Designation of FP1 LLC, FP2 LLC, and Debtors of the Deposition of John R. Shrewsberry, taken March 31, 2008   |

### **STATEMENT OF ISSUES ON APPEAL**

1. Whether the Bankruptcy Court erred in entering denying the First Motion, Third Motion and the Assumption Motion.
2. Whether the Bankruptcy Court erred in interpreting the provisions of each of the four master lease agreements (each, an "SLB-B Master Lease").
3. Whether the Bankruptcy Court erred in holding that the terms and provisions of each SLB-B Master Lease evidence that the individual leaseholds incorporated within each SLB-B Master Lease were not divisible into separate agreements.



4. Whether the Bankruptcy Court erred in holding that the negotiations concerning the SLB-B Master Leases, the parties' conduct relating to the SLB-B Master Leases (both pre- and post-execution) and the parties' course of dealings (both pre- and post-execution) support its finding that the SLB-B Master Leases are indivisible.

5. Whether the Court erred in its application of Illinois state law.

6. Whether the Court erred in finding the parties to the SLB-B Master Leases did not intend that those agreements constitute a collection of divisible leases subject to individual assumption or rejection.

7. Whether the Bankruptcy Court erred in interpreting the significance of the apportionability of rent under the SLB-B Master Leases.

8. Whether the Bankruptcy Court erred in finding that the SLB-B Master Lease's cross-default provisions evidenced an intent that the leases were not severable.

9. Whether the Bankruptcy Court erred in finding that the individual leaseholds in each SLB-B Master Lease were economically interdependent.

10. Whether the Bankruptcy Court erred in finding that allowing the Debtors to reject the leaseholds individually would destroy the essence of the Landlords' bargains.

11. Whether the Bankruptcy Court erred in finding that the application of state law alone, without consideration of federal law and policy, controlled whether the leaseholds were severable from the SLB-B Master Leases.

Dated: June 2, 2008  
Wilmington, Delaware

**YOUNG CONAWAY  
STARGATT & TAYLOR, LLP**

/s/ Patrick A. Jackson  
Pauline K. Morgan (No. 3650)  
M. Blake Cleary (No. 3614)  
Patrick A. Jackson (No. 4976)  
Young Conaway Stargatt & Taylor, LLP  
The Brandywine Building  
1000 West Street, 17th Floor  
Wilmington, DE 19801  
Telephone: (302) 571-6600  
Telecopy: (302) 571-1253

-and-

**QUINN EMANUEL URQUHART  
OLIVER & HEDGES, LLP**

Susheel Kirpalani  
James C. Tecce  
Robert K. Dakis  
Quinn Emanuel Urquhart Oliver & Hedges, LLP  
51 Madison Avenue, 22nd Floor  
New York, NY 10010  
Telephone: (212) 849-7000  
Telecopy: (212) 849-7100

*Counsel to the Debtors*